APPEAL NO. 140651
FILED MAY 19, 2014

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on January 30, 2014, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the [date of injury], compensable injury does not extend to herniations at L3-4, L4-5, and L5-S1, lumbar radiculopathy, lumbosacral neuritis, lumbosacral radiculitis, the hydration of intervertebral discs at L3-4 and L5-S1, a sprain/strain of the anterior cruciate ligament (ACL) of the left knee, thoracic neuritis, or thoracic radiculitis; (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 24, 2013; (3) the claimant's impairment rating (IR) is five percent; and (4) the claimant did not have disability from March 20 through May 24, 2013. The claimant appealed, disputing the hearing officer's determinations of the extent of the compensable injury; MMI; IR; and disability. The claimant argues that the certification of MMI and IR adopted by the hearing officer did not rate the entire compensable injury. The claimant additionally argues that the evidence presented provided a strong traceable connection between the on the job accident and the injuries he sustained. The claimant contends that he did have disability for the disputed period and that the designated doctor determined that the disability was a result of the compensable injury. The respondent (carrier) responded, urging affirmance of the disputed determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated that on [date of injury], the claimant sustained a compensable injury which includes a left knee contusion, right elbow epicondylitis, and a lumbar sprain/strain, and [Dr. L] is the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) for MMI, IR, extent of injury, return to work, and direct result. The claimant testified that he was lifting a computer server and felt a pop in his back. The claimant dropped the server and fell striking his right elbow on the server and his left knee on the ground. The claimant testified that he returned to work on March 20, 2013, working with restrictions but was earning his regular salary.

**DISABILITY**

The hearing officer's determination that the claimant did not have disability from March 20 through May 24, 2013, is supported by sufficient evidence and is affirmed.

## EXTENT OF INJURY

That portion of the hearing officer's determination that the [date of injury], compensable injury does not extend to herniations at L3-4, L4-5, and L5-S1, lumbar radiculopathy, lumbosacral neuritis, lumbosacral radiculitis, the hydration of intervertebral discs at L3-4 and L5-S1, thoracic neuritis, or thoracic radiculitis is supported by sufficient evidence and is affirmed.

The hearing officer additionally determined that the [date of injury], compensable injury does not extend to a sprain/strain of the ACL of the left knee. In the Discussion portion of the decision and order, the hearing officer stated: "[o]n his date of injury, the claimant fell and hit his left knee on the ground. It is not within the knowledge of a layperson that the claimed mechanism of injury could cause a sprain/strain of the [ACL] of the left knee."

The Appeals Panel has, on numerous occasions, rejected the contention that a sprain/strain requires expert medical evidence to establish causation. *See* Appeals Panel Decision (APD) 130160, decided March 18, 2013; APD 120383, decided April 20, 2012; APD 992946, decided February 14, 2000; APD 952129, decided January 31, 1996. *See also* APD 130808, decided May 20, 2013. In the case on appeal, the hearing officer is requiring expert medical evidence to establish causation between the compensable injury and a sprain/strain of the ACL of the left knee. The hearing officer is requiring a higher standard than that required under the law, as cited in this decision, to establish causation. *See* APD 130915, decided May 20, 2013. Accordingly, we reverse that portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to a sprain/strain of the ACL of the left knee, and we remand that portion of the extent-of-injury issue to the hearing officer to make a determination using the proper legal standard consistent with this decision.

## MMI/IR

The hearing officer determined that the claimant reached MMI on May 24, 2013, with a five percent IR as certified by Dr. L, the designated doctor. Dr. L initially examined the claimant on March 19, 2013, and certified that the claimant had not yet reached MMI. Dr. L subsequently examined the claimant on August 27, 2013, and certified that the claimant reached MMI on May 24, 2013, with a five percent IR, using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000). Dr. L placed the claimant in Lumbosacral Diagnosis-Related Estimate Category II, assigning five percent impairment for a lumbar sprain/strain and assessed zero percent impairment for a left knee sprain noting that the injury had resolved without deficits. We note that Dr. L failed to consider or rate right

elbow epicondylitis which was stipulated by the parties to be part of the compensable injury. *See* APD 131782, decided September 19, 2013. Further, we note that Dr. L assigned impairment for a left knee sprain rather than a left knee contusion which was stipulated to be a part of the compensable injury.

Given that we have reversed and remanded the extent-of-injury determination to the hearing officer, we also reverse the hearing officer's determinations that the claimant reached MMI on May 24, 2013, with a five percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

## SUMMARY

We affirm the hearing officer's determination that the claimant did not have disability from March 20 through May 24, 2013.

We affirm that portion of the hearing officer's determination that the [date of injury], compensable injury does not extend to herniations at L3-4, L4-5, and L5-S1, lumbar radiculopathy, lumbosacral neuritis, lumbosacral radiculitis, the hydration of intervertebral discs at L3-4 and L5-S1, thoracic neuritis, or thoracic radiculitis.

We reverse that portion of the hearing officer's determination that the compensable injury of [date of injury], does not extend to a sprain/strain of the ACL of the left knee, and we remand that portion of the extent-of-injury issue to the hearing officer to make a determination using the proper legal standard consistent with this decision.

We reverse the hearing officer's determinations that the claimant reached MMI on May 24, 2013, with a five percent IR, and we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

## REMAND INSTRUCTIONS

Dr. L is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. L is still qualified and available to be the designated doctor. If Dr. L is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed pursuant to 28 TEX. ADMIN. CODE § 127.5(c) (Rule 127.5(c)) to determine MMI and the IR.

The hearing officer is to make a determination whether the compensable injury of [date of injury], extends to a sprain/strain of the ACL of the left knee. Based on the hearing officer's determination regarding the sprain/strain of the ACL of the left knee, the hearing officer is then to determine whether a certification of MMI and IR that rates

the entire injury is in evidence or whether a new certification of MMI and IR by the designated doctor is necessary. If a new certification of MMI and IR is necessary, the hearing officer is to inform the designated doctor that the compensable injury of [date of injury], extends to a left knee contusion, right elbow epicondylitis, and a lumbar sprain/strain, and a sprain/strain of the ACL of the left knee, depending upon the hearing officer's determination on that issue.

The parties are to be provided with the hearing officer's letter to the designated doctor, the designated doctor's response, and to be allowed an opportunity to respond. The hearing officer is to make determinations which are supported by the evidence on extent of injury, MMI, and IR consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY**
**211 EAST 7TH STREET, SUITE 620**
**AUSTIN, TEXAS 78701-3232**.

Margaret L. Turner
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Carisa Space-Beam
Appeals Judge